

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Cox Communications, Inc., d/b/a Cox	)	CSR 7087-E
Communications Middle Georgia	)	
	)	
Petition for Determination of Effective	)	
Competition in Various Georgia Communities	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: March 25, 2008**

**Released: March 26, 2008**

By the Associate Bureau Chief, Media Bureau:

**I. INTRODUCTION AND BACKGROUND**

1. Cox Communications, Inc. d/b/a Cox Communications Middle Georgia ("Cox"), hereinafter referred to as "Petitioner," has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(2), 76.905(b)(1) and 76.907 of the Commission's rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as "Communities." Petitioner alleges that its cable system serving the communities listed on Attachment B and hereinafter referred to as Group B Communities is subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended ("Communications Act")<sup>1</sup> and the Commission's implementing rules,<sup>2</sup> and is therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. ("DirecTV") and EchoStar Corporation ("EchoStar").<sup>3</sup> Petitioner additionally claims to be exempt from cable rate regulation in the communities listed on Attachment C and hereinafter referred to as Group C Communities because the Petitioner serves fewer than 30 percent of the households in the franchise area. The petition is unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>4</sup> as that term is defined by Section 623(1) of the Communications Act and Section 76.905 of the Commission's rules.<sup>5</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.<sup>6</sup> For the reasons set forth below, we grant the Petition based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

<sup>1</sup>See 47 U.S.C. § 543(a)(1).

<sup>2</sup>47 C.F.R. § 76.905(b)(2) and 47 C.F.R. § 76.905(b)(1).

<sup>3</sup> In the Robins AFB franchise area, Cox bases its petition on a combination of the subscribers of the two DBS providers and a cable operator, Watson Cable, which also operates in the franchise area.

<sup>4</sup>47 C.F.R. § 76.906.

<sup>5</sup>See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

<sup>6</sup>See 47 C.F.R. §§ 76.906 & 907.

## II. DISCUSSION

### A. The Competing Provider Test

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area;<sup>7</sup> this test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.<sup>8</sup>

5. Turning to the first prong of this test, it is undisputed that these Group B Communities are “served by” both DBS providers, DIRECTV and EchoStar, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.<sup>9</sup> The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.<sup>10</sup> We further find that Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Group B Communities to support their assertion that potential customers in the Group B Communities are reasonably aware that they may purchase the service of these MVPD providers.<sup>11</sup> The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming<sup>12</sup> and is supported in this petition with copies of channel lineups for both DIRECTV and EchoStar.<sup>13</sup> Also undisputed is Petitioner’s assertion that both DIRECTV and EchoStar offer service to at least “50 percent” of the households in the Group B Communities because of their national satellite footprint.<sup>14</sup> Accordingly, we find that the first prong of the competing provider test is satisfied.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in the Group B Communities.<sup>15</sup> Petitioner sought to

<sup>7</sup>47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

<sup>8</sup>47 C.F.R. § 76.905(b)(2)(i).

<sup>9</sup>*See Petition at 6-8*.

<sup>10</sup>*Mediacom Illinois LLC et al., Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006).

<sup>11</sup>47 C.F.R. § 76.905(e)(2).

<sup>12</sup>*See* 47 C.F.R. § 76.905(g). *See also* *Petition at 5*.

<sup>13</sup>*See* *Petition at 5 and Exhibit 2*.

<sup>14</sup>*See* *Petition at 4-5*.

<sup>15</sup>*Id.* at 9-13. Cox is the largest MVPD in the Communities of Unincorporated Bibb County, Macon, Unincorporated Houston County, Centerville, Robins AFB, Warner Robins, and Byron. However, Cox is unable to determine which MVPD is the largest in the Communities of Unincorporated Jones County and Unincorporated Peach County

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determine the competing provider penetration in the Group B Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association (“SBCA”) that identified the number of subscribers attributable to the DBS providers within the Group B Communities on a zip code plus four basis.<sup>16</sup>

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,<sup>17</sup> as reflected in Attachment B, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Group B Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Group B Communities.

8. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Group B Communities.

#### **B. The Low Penetration Test**

9. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area; this test is otherwise referred to as the “low penetration” test.<sup>18</sup> Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the franchise area.

10. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment C, we find that Petitioner has demonstrated the percentage of households subscribing to its cable service is less than 30 percent of the households in the Group C Communities. Therefore, the low penetration test is also satisfied as to the Group C Communities.

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because the DBS subscribership data obtained from SBCA is aggregated and does not break down the individual subscribership of each DBS provider. Nevertheless, Cox argues that it is subject to effective competition because in addition to DBS penetration exceeding 15 percent of the occupied households, the number of Cox subscribers also exceed 15 percent and the Commission has recognized that in such cases the second prong of the competing provider test is satisfied.

<sup>16</sup>Petition at 10-12 and Exhibit 7.

<sup>17</sup>Petition at 11-13 and Exhibit 8.

<sup>18</sup>47 U.S.C. § 543(l)(1)(A).

### III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Cox Communications, Inc., d/b/a Cox Communications Middle Georgia IS **GRANTED**.

12. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.<sup>19</sup>

FEDERAL COMMUNICATIONS COMMISSION

Nancy Murphy  
Associate Bureau Chief, Media Bureau

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<sup>19</sup>47 C.F.R. § 0.283.

**ATTACHMENT A****CSR 7087-E****COMMUNITIES SERVED BY COX COMMUNICATIONS, INC. D/B/A COX  
COMMUNICATIONS MIDDLE GEORGIA**

<b>Communities</b>	<b>CUID(S)</b>
<b>Bibb County</b>	<b>GA0131</b>
<b>Macon</b>	<b>GA0033</b>
<b>Houston County</b>	<b>GA0132</b>
<b>Centerville</b>	<b>GA0682</b>
<b>Robins AFB</b>	<b>GA0133</b>
<b>Warner Robins</b>	<b>GA0041</b>
<b>Byron</b>	<b>GA0180</b>
<b>Jones County</b>	<b>GA0194</b>
<b>Peach County</b>	<b>GA0683</b>
<b>Payne</b>	<b>GA0154</b>
<b>Monroe County</b>	<b>GA0684</b>

## ATTACHMENT B

## CSR 7087-E

COMMUNITIES SERVED BY COX COMMUNICATIONS, INC. D/B/A COX  
COMMUNICATIONS MIDDLE GEORGIA

<b>Communities</b>	<b>CUID(S)</b>	<b>CPR*</b>	<b>2000 Census Household</b>	<b>Estimated DBS Subscribers</b>
<b>Bibb County</b>	<b>GA0131</b>	<b>16.97%</b>	<b>21139</b>	<b>3587</b>
<b>Macon</b>	<b>GA0033</b>	<b>27.80%</b>	<b>38444</b>	<b>10688</b>
<b>Houston County</b>	<b>GA0132</b>	<b>24.54%</b>	<b>15350</b>	<b>3767</b>
<b>Centerville</b>	<b>GA0682</b>	<b>15.69%</b>	<b>51595</b>	<b>250</b>
<b>Robins AFB</b>	<b>GA0133</b>	<b>29.93%**</b>	<b>696</b>	<b>52</b>
<b>Warner Robins</b>	<b>GA0041</b>	<b>21.28%</b>	<b>19550</b>	<b>4161</b>
<b>Byron</b>	<b>GA0180</b>	<b>44.55%</b>	<b>1061</b>	<b>472</b>
<b>Jones County</b>	<b>GA0194</b>	<b>38.79%</b>	<b>7993</b>	<b>3100</b>
<b>Peach County</b>	<b>GA0683</b>	<b>35.14%</b>	<b>4325</b>	<b>1520</b>

\*CPR = Percent of competitive DBS penetration rate.

\*\*Combined DBS/Watson Cable penetration rate (DBS ( $52 \div 696 = 7.52\%$ )) and cable ( $156 \div 696 = 22.41\%$ ).  
(Cox combines the DBS and Watson Cable subscribers to establish that MVPDs other than the largest MVPD satisfies the 15 percent penetration rate required under the competing provider test).

**ATTACHMENT C****CSR 7087-E****COMMUNITIES SERVED BY COX COMMUNICATIONS, INC. D/B/A COX  
COMMUNICATIONS MIDDLE GEORGIA**

<b>Communities</b>	<b>CUID(S)</b>	<b>Franchise Area Households</b>	<b>Cable Subscribers</b>	<b>Penetration Percentage</b>
<b>Payne</b>	<b>GA0154</b>	<b>84</b>	<b>22</b>	<b>26.19%</b>
<b>Monroe County</b>	<b>GA0684</b>	<b>6176</b>	<b>30</b>	<b>0.49%</b>